

Calendar No. 260

112TH CONGRESS
1ST SESSION

S. 1236

To reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, JUNE 16), 2011

Mrs. FEINSTEIN (for herself, Mr. KYL, Ms. LANDRIEU, Mrs. McCASKILL, Mr. UDALL of New Mexico, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

DECEMBER 15, 2011

Reported by Mr. LEAHY, without amendment

A BILL

To reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Tunnel Preven-
5 tion Act of 2011”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) As the international border between the
4 United States and Mexico becomes more secure,
5 trafficking and smuggling organizations intensify
6 their efforts to enter the United States by increasing
7 the number of tunnels and other subterranean pas-
8 sages between Mexico and the United States.

9 (2) Border tunnels are most often used to
10 transport narcotics from Mexico to the United
11 States, but can also be used to transport people and
12 other contraband.

13 (3) Between May 1990 and May 2011, law en-
14 forcement authorities discovered 137 tunnels, 125 of
15 which have been discovered since September 2001.
16 While law enforcement authorities discovered only 2
17 tunnels in California between 1990 and 2001, there
18 has been a dramatic increase in the number of bor-
19 der tunnels discovered in California since 2001.

20 (4) Section 551 of the Department of Home-
21 land Security Appropriations Act, 2007 (Public Law
22 109–295) added a new section to title 18, United
23 States Code (18 U.S.C. 555), which—

24 (A) criminalizes the construction or financ-
25 ing of an unauthorized tunnel or subterranean

1 passage across an international border into the
2 United States; and

3 (B) prohibits any person from recklessly
4 permitting others to construct or use an unau-
5 thorized tunnel or subterranean passage on the
6 person's land.

7 (5) Any person convicted of using a tunnel or
8 subterranean passage to smuggle aliens, weapons,
9 drugs, terrorists, or illegal goods is subject to an en-
10 hanced sentence for the underlying offense. Addi-
11 tional sentence enhancements would further deter
12 tunnel activities and increase prosecutorial options.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) NATIONAL SECURITY ZONE.—The term
16 “national security zone” means any Southwest Bor-
17 der land designated by the Secretary as being at a
18 high risk for border tunnel activity, as authorized
19 under section 8(b).

20 (2) SECRETARY.—The term “Secretary” means
21 the Secretary of Homeland Security.

22 (3) SOUTHWEST BORDER LAND.—The term
23 “Southwest Border land” means all parcels of real
24 property in the United States that—

1 (A) are located within 1 mile of the inter-
 2 national border between the United States and
 3 Mexico; and

4 (B) are not owned by a Federal, State,
 5 tribal, or local government entity.

6 **SEC. 4. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR**
 7 **FINANCE A BORDER TUNNEL.**

8 Section 555 of title 18, United States Code, is
 9 amended by adding at the end the following:

10 “(d) Any person who attempts or conspires to commit
 11 any offense under this section shall be subject to the same
 12 penalties as those prescribed for the offense, the commis-
 13 sion of which was the object of the attempt or con-
 14 spiracy.”.

15 **SEC. 5. AUTHORIZATION FOR INTERCEPTION OF WIRE,**
 16 **ORAL, OR ELECTRONIC COMMUNICATIONS.**

17 Section 2516(1)(c) of title 18, United States Code,
 18 is amended by inserting “, section 555 (relating to con-
 19 struction or use of international border tunnels)” before
 20 the semicolon at the end.

21 **SEC. 6. FORFEITURE.**

22 (a) CRIMINAL FORFEITURE.—Section 982(a)(2)(B)
 23 of title 18, United States Code, is amended by inserting
 24 “555,” after “545,”.

1 (b) CIVIL ASSET FORFEITURE.—Any merchandise
 2 introduced into the United States through a tunnel or pas-
 3 sage described in section 555(a) of title 18, United States
 4 Code, shall be subject to seizure and forfeiture in accord-
 5 ance with section 596(c) of the Tariff Act of 1930 (19
 6 U.S.C. 1595a(c)).

7 **SEC. 7. MONEY LAUNDERING DESIGNATION.**

8 Section 1956(c)(7)(D) of title 18, United States
 9 Code, is amended by inserting “section 555 (relating to
 10 border tunnels),” after “section 554 (relating to smug-
 11 gling goods from the United States),”.

12 **SEC. 8. NOTIFICATION REQUIREMENTS.**

13 (a) NOTIFICATION TO LAND OWNERS.—The Sec-
 14 retary is encouraged to annually provide each known non-
 15 governmental owner and tenant of land located in a na-
 16 tional security zone with a written notification that de-
 17 scribes—

- 18 (1) Federal laws related to the construction of
 19 illegal border tunnels; and
- 20 (2) the procedures for reporting violations of
 21 such laws to U.S. Immigration and Customs En-
 22 forcement.

23 (b) DESIGNATION OF BORDER TUNNEL HIGH RISK
 24 AREAS.—

1 (1) IN GENERAL.—The Secretary may des-
2 ignate any Southwest Border land that the Sec-
3 retary has a substantial reason to believe is at a
4 high risk for border tunnel activity as a national se-
5 curity zone.

6 (2) PUBLICATION.—The Secretary shall—

7 (A) publish any designations made under
8 paragraph (1) in the Federal Register; and

9 (B) allow appropriate notice and comment
10 in accordance with the chapter 5 of title 5,
11 United States Code (commonly referred to as
12 the “Administrative Procedures Act”).

13 (c) RULEMAKING.—Not later than 18 months after
14 the date of the enactment of this Act, the Secretary shall
15 promulgate regulations to carry out this section.

16 **SEC. 9. REPORT.**

17 (a) IN GENERAL.—The Secretary shall submit an an-
18 nual report to the congressional committees set forth in
19 subsection (b) that includes a description of—

20 (1) the cross border tunnels in Southwest Bor-
21 der land discovered during the reporting period; and

22 (2) the needs of the Department of Homeland
23 Security to effectively prevent, investigate and pros-
24 ecute border tunnel construction on Southwest Bor-
25 der land.

1 (b) CONGRESSIONAL COMMITTEES.—The congres-
2 sional committees set forth in this subsection are—

3 (1) the Committee on Homeland Security and
4 Governmental Affairs of the Senate;

5 (2) the Committee on the Judiciary of the Sen-
6 ate;

7 (3) the Committee on Appropriations of the
8 Senate;

9 (4) the Committee on Homeland Security of the
10 House of Representatives;

11 (5) the Committee on the Judiciary of the
12 House of Representatives; and

13 (6) the Committee on Appropriations of the
14 House of Representatives.

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